

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

to return to work as a mail processing clerk. Appellant's claim remained open for medical benefits.²

On May 22, 2013 appellant filed a notice of recurrence of disability (Form CA-2a) alleging a worsening of his accepted work-related conditions as of October 3, 2012 and continuing. By decision dated December 5, 2013, OWCP denied appellant's recurrence claim. Appellant requested reconsideration on April 28, 2014 and, by decision dated September 18, 2014, OWCP denied modification of its December 5, 2013 decision. Appellant again requested reconsideration and, by decision dated February 3, 2016, OWCP denied modification of its September 18, 2014 decision.

OWCP subsequently received additional evidence including reports from Dr. Jill W. Donaldson, a Board-certified neurosurgeon, who requested authorization for a two-level anterior cervical discectomy and fusion C5-6 and C6-7. It also received an August 31, 2016 report from an OWCP medical adviser, who opined that the proposed cervical fusion surgery was medically necessary and causally related to the accepted medical conditions.³ On December 1, 2016 appellant underwent an OWCP-approved two-level anterior cervical discectomy and fusion C5-6 and C6-7, which Dr. Donaldson performed.

Appellant requested reconsideration on January 20, 2017 and submitted additional evidence, including appellant's hospital record and postsurgical follow-up reports from Dr. Donaldson pertaining to the December 1, 2016 surgery.

By decision dated November 6, 2017, OWCP denied review of the merits of the claim, finding the medical evidence cumulative in nature. It did not mention receipt of the August 31, 2016 report from its medical adviser, who opined that the proposed neck spinal fusion surgery was medically necessary and causally related to the accepted injury, or the fact that appellant had undergone an OWCP-authorized two-level anterior cervical discectomy and fusion at C5-6 and C6-7 on December 1, 2016.

In the case of *William A. Couch*, the Board held that when adjudicating a claim, OWCP is obliged to consider all evidence received by OWCP before the final decision is issued.⁴

The Board finds that, since the underlying issue in this case is whether appellant has established a recurrence of disability commencing October 3, 2012 and continuing due to a worsening of the accepted conditions, the December 2016 surgical procedure appellant underwent would necessarily involve a period of disability. For these reasons, the case will be remanded to OWCP to enable it to properly consider all the evidence submitted at the time of the November 6,

² Appellant did not re-apply for employment with the employing establishment within 30 days as advised in OWCP's September 6, 2012 termination decision.

³ In previous reports dated July 13 and August 26, 2016, the medical adviser opined that the proposed neck spinal fusion surgery was not medically necessary as the most recent MRI was dated April 3, 2013.

⁴ 41 ECAB 548 (1990).

2017 decision. Following such further development as OWCP deems necessary, it shall issue an appropriate decision on appellant's recurrence claim.

IT IS HEREBY ORDERED THAT the November 6, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: April 4, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board